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AUTHOR Clear, Delbert K.; Box, John M.
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ABSTRACT

Dismissals for ineffective teaching, as distinguished from insubordination, immorality, or improper treatment of students, are rare because standards of teaching against which to juxtapose an individual teacher's behavior have not been available. However, abstract performance standards for teachers are beginning to emerge from research on teaching effectiveness. A table, compiled from research as well as field observation and task analyses of teaching in elementary and secondary schools, is presented as a model of stable standards of performance that will withstand judicial scrutiny. The first column heading of the table--behavior or quality--is subdivided into the following five categories: (1) instructional or pedagogical methods, (2) use of subject-matter, (3) direct outcomes of teaching, (4) interpersonal and organizational relationships, and (5) self-renewal. The second column--basis for claim of performance validation--contains letters that refer to authoritative sources of empirical data. The third column--illustrative court decisions--contains numbers that refer to cases cited in footnotes. A review of particular cases that illustrate instructional competency follows the table. The model is intended to provide teachers with comprehensive, stable, and valid performance standards. These standards also can be used to assess the work done, to provide corrective action, and to determine whether improvement has occurred. (MLF)

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Justiciable Performance Standards for Discharging Incompetent Teachers

Delbert K. Clear
John M. Box

Criteria of Teaching Effectiveness

Over the years, many courts have been asked to examine school district charges that teachers with property or other interest in their positions are not sufficiently competent to continue in them. Where such a vested interest is found, a district bringing such charges must meet a heavy burden of proof in order to prevail. Meeting this burden has traditionally been a difficult task for school administrators because standards of teaching against which to juxtapose an individual teacher's behavior have not been available. Additionally, counsel too often are brought into the cases at the final stages only to discover that proper and usable proof data have not been collected. As a result, dismissals for ineffective teaching, as distinguished from insubordination, immorality, or improper treatment of students, are rare. Districts may simply tolerate substandard teaching, or deal with it by encouraging voluntary resignation, or transfer, or by taking other action short of dismissal. Only where nothing else seems to work, and the pressure for doing something becomes impossible to ignore, is dismissal typically attempted.

The practice of toleration, though widely adopted, is no practice at all — it is abdication that exacts a heavy toll on students. Waiting until the pressure is too great to ignore is equally unsatisfactory because it leads to *post-hoc* formulation of performance standards based on conventional wisdom, personal preferences, past experience, and opportunistic seizing on the events of the moment — that will both "fit" the teacher under scrutiny and appeal plausibly to a court. This results in standards that are unreliable, and often invalid. The injection of arbitration and employment relations board review into the matter does little more than exacerbate the problem for a district: it places into the process additional persons to review the efficacy of the *ad hoc* standards used, thus increasing the probability that the decisions will be upset. As a matter of fact, such *ad hoc*

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configurations literally beg to be second-guessed by anyone in the process who has a self-perceived better version of standards of effective teaching than those of school officials. Two recent cases illustrate this point.

In Iowa, a teacher with nineteen years of experience was charged by the district with using faulty teaching methods, being insubordinate, instituting inappropriate disciplinary actions, and being unable to relate to students. Both an arbitrator and a trial court agreed with the teacher's claim that the district had failed to justify the charges; an appellate court heard and sustained the lower decisions. The appellate court noted that any defects the teacher had were merely "evidence of professional faults" which should be corrected by non-repetition or by improvement rather than dismissal.[1]

In Kansas, a teacher who apparently had trouble getting along with students, fellow employees, and the administration, (particularly after he became the teachers' chief negotiator) was charged with the following:

(1) Failure to work with the Administration;

(2) Failure to maintain adequate control of the classroom;

(3) Failure to maintain adequate lesson plans;

(4) Failure to properly care for school livestock over the weekend;

(5) Failure to care for school equipment.[2]

Neither the trial court nor the appellate court could find sufficient evidence to sustain any of the charges. Reading between the lines suggests that this case illustrates the worst of all possible personnel practices — deciding first to discharge a teacher, then formulating standards of performance to justify the decision. The appellate court concluded that, in some of the disputes, the problems were more reflective of "philosophical matters" than of competence. Throughout the case, as well, the absence of stable standards of performance contributed to the board's failure to meet procedural due process requirements.

More often, charges of incompetence are not even brought. Instead teacher dismissals are sought for insubordination or unfitness to

1. Board of Directors v. Sexton, 334 N.W.2d 341 (Iowa Ct. App. 1983).
2. Haddock v. Board of Educ., 661 P.2d 368 (Kan. 1983).

teach. A classical example of this approach occurred in Colorado, where, though the district was successful in its efforts, it did not prevail on a showing of the teacher's obviously inefficient performance. Instead, the dismissal was upheld on the charge of insubordination — for the teacher's refusal to comply with the principal's recommendations for improvement. Direct tests of the efficacy of those recommendations against known performance standards and the teacher's personal behaviors were avoided by the appellate court.[3]

Even in cases where the district prevails in direct charges of incompetence, the decisions often reflect the depth of the problem. In 1979, an Iowa court found the dismissal of a teacher justified by the record and commented as follows:

> [P]robably no inflexible "just cause" definition we could devise would be adequate to measure the myriad of situations which may surface in future litigation. It is sufficient here to hold that in the context of teacher fault a "just cause" is one which directly or indirectly significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students. It relates to job performance including leadership and role model effectiveness. It must include the concept that the school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance. On the other hand, "just cause" cannot include reasons which are arbitrary, unfair, or generated out of some petty vendetta.[4]

Similar hesitation was revealed by a California court which conceded that, even though a teacher's lack of classroom control was sufficient to warrant his dismissal, "[m]aintenance of appropriate classroom behavior is extremely difficult to quantify; one can imagine (with horror) uniform guidelines framed in terms of permissible decibel levels or schedules of acceptable incidents of misbehavior per unit of time or student population."[5]

Success in basing dismissals on unsatisfactory performance is too often limited to those situations where the behaviors are sufficiently egregious to make it virtually unnecessary to articulate the performance standards from which they depart. The effect, though to the

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3. Thompson v. Board of Educ., 668 P.2d 954 (Colo. Ct. App. 1983).
4. Briggs. v. Board of Directors, 282 N.W.2d 740, 743 (Iowa 1979).
5. California Teachers' Ass'n v. Governing Bd., 192 Cal. Rptr. 358, 363 (Cal. Ct. App. 1983).

immediate benefit of the district in which the dismissal occurs, contributes little useful precedent. Worst of all, it seriously limits, in actual practice, any district's ability to enforce standards of teaching that would prove that a "school district is not married to mediocrity."[6] One looks in vain for cases where judges have sanctioned the dismissal of merely weak teachers. Without exception, the successful cases are those where the teacher's misbehavior is extreme. Discharging such teachers, however, is not without problems. Even in these cases, the district's standards are frequently found either absent, faulty, or unevenly applied and the teachers restored to their positions. An Iowa case illustrates: Even though the court upheld the dismissal of a teacher who required excessive homework, caused children to develop emotional problems, caused students be truant, belittled children publicly, and yet resolutely refused to change in any way, it was sternly lectured about the decision in a vigorous and interesting dissent: "Teacher tenure is too important for us to run roughshod over it .... The evidence in the record clearly points to the conclusion that the plaintiff is being punished by loss of her livelihood for her disagreement with the principal's educational philosophy and her expression of such disagreement.[7]

There is a desperate need for stable standards of performance that will withstand judicial scrutiny: (1) required teacher knowledge, competencies, and skills are predetermined; (2) the evaluation system is capable of detecting departures from the standards; and (3) the standards are known to all teachers and opportunity to correct shortcomings is provided.[8] If these could be established, everyone would benefit except clearly incompetent teachers. Administrators would know where to focus their efforts; good teachers would be saved from the annoyance of frivolous charges; and, most importantly, children would be rescued from poor teaching.

Progress toward justiciable performance standards for teachers has recently occurred both in litigation and in research and development on teaching. For example, in litigation a move seems to be under way to focus on definitive criteria of teacher performance as measured by standardized tests. Such efforts have assessed teacher qualities both before teaching and after it has been completed. An example of the former occured recently in Los Angeles where teachers' failure to meet minimum standards of knowledge of their subjects as measured by the National Teachers' Examination was found to be just cause for

6. Briggs, 282 N.W.2d at 743.
7. Everett v. Board of Educ., 344 N.W.2d 320 325-26 (Iowa Ct. App. 1983).
8. J. Beckham, Legal Aspects of Teacher Evaluation (NOLPE Monograph 1981).

their discharge.[9] The latter approach focuses not on what the teacher did, in terms of various teaching behaviors, but on students' mastery of the material on standardized tests. This presents a qualitative context into which a court can place the charges of incompetence because normative standards accompany virtually all systematic measures of student progress. Where substantial and persistent departure from them occurs, the logic that the teacher must have had something to do with it can be persuasive.[10]

More importantly, however, performance standards concentrating on teacher-input factors are beginning to emerge from the research on teaching effectiveness. Unlike the situation of just a few years ago, when virtually everyone despaired of ever finding casual relationships between teacher behaviors and student learning, certain teaching behaviors can now be described and empirically validated as being effective, while their reverse can be similarly described and validated as being ineffective. Thus, abstract performance standards for teachers are beginning to emerge. Though they are in outline form, and suffer the same problems as any static listing of a complex, dynamic process, they do exist and can be used as a profile or taxonomy of effective teaching. Further, their behavioral qualities make them easily presentable as skills that can be taught quite independent of personality, philosophical, and other qualitative predispositions of both teachers and supervisors. For the most part they are, in the jargon of the discipline, *low inference*, rather than *high inference* variables or qualities. In legal terminology, these correspond to the *facts* that are presented as opposed to the *conclusions* derived from them. Though the approach is predicated upon the assumption that discrete teacher behaviors can be isolated that will be applicable across a wide range of teaching contexts, teaching behaviors cannot now and never will be identified that are 100% predictive of teacher success. Instead, the thrust is toward constructing comprehensive lists of effective teaching behaviors which constitute the repertoire from which successful teachers select teaching strategies at any given moment.[11]

Made operational in schools, this means that comprehensive job descriptions can now be drafted which are based on research as well as clearly articulated and logically defensible local values regarding teaching effectiveness. To the extent this is done behaviorally, scien-

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9. United Teachers, Los Angeles v. Los Angeles Unified School Dist. 189 Cal. Rptr. 897 (Cal. Ct. App. 1983).

10. Sheelhaase v. Woodbury Commun. School Dist., 488 F.2d 237, 245 8th Cir. (1973).

11. *See* references D and I in Table 1, *supra*, and Hunter, *Teaching Is Decision-Making* 37 Educ. Leadership 1, 62-67 (1979).

tifically, logically, and comprehensively, the lists will obviate the need to formulate *ad hoc* standards when teachers fall into inefficient performance. Instead, the expected standards of performance, which exist prior to the teaching, will provide the criteria for assessment and guides to the improvement of deficient performance. Just as important, the scientific and professional care with which the entries on the list have been formulated strengthens them against the inevitable challenge that the qualities and behaviors listed on teacher rating scales of any kind, no matter how carefully drawn, are about as likely to result in undesirable low student achievement as high.[12] Though there is no gainsaying the fact that *all* teaching is powerfully influenced by the context in which it occurs — grade and ability levels, socio-economic and other family background, and subject-matter — such lists nevertheless contain the key behaviors from which all teachers should draw their instructional strategies. This in no way suggests that alternative teaching methods may not be appropriate at any given moment, but it does provide a "scientific" base on which teachers can successfully create the "art" of their profession.[13]

Table 1, which was compiled from research as well as field observation and task analyses of teaching in elementary and secondary schools, is such a list. The following definitions apply to the column headings:

(1) BEHAVIOR — a micro-element of teaching, the actual behaviors that are seen or not seen which lead to inferences regarding the efficiency of the teaching being observed;

(2) BASIS FOR CLAIM OF PERFORMANCE VALIDATION — reasonably dependable empirical data or a compelling logical relationship exist which can be cited as evidence that the behavior is associated with teaching effectiveness. The letters entered in the column refer to the various authoritative sources listed at the bottom of the table;

(3) ILLUSTRATIVE COURT DECISIONS — cases that illustrate the importance of a similar factor in establishing — or failing to establish — just cause for a teacher's dismissal. The numbers refer to cases listed in the footnotes.

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12. Soar, Medley, & Coker, *Teacher Evaluation: A Critique of Currently Used Methods*, Phi Delta Kappan 239, 245 (Dec. 1983).

13. Gage, *What Do We Know About Teaching Effectiveness?*, Phi Delta Kappan 66, 87-93 (Oct. 1984).

Table I

Performance Standards Which Have Been Found to be Associated with Teacher Effectiveness

Behavior or Quality		Basis for Claim of Performance Validation *	Illustrative Court Decisions **
A. Instructional or Pedagogical Methods			
1.	Introducing Lessons	A,B,C,D,F,G,H	17
2.	Establishing a Frame of Reference	A,B,C,D,E,F,G,H	17,22
3.	Varying Instructional Strategies	A,E	16
4.	Using questioning Techniques	A,B,C,D,E,F,G,H	
5.	Direct and Business-like Activities	B,D,E,G,H	28
6.	Responding to Students	A,B,D,G,H	18,22
7.	Ending Lessons	A,K	17
8.	Clarity of Explanations and Directions	A,B,E,F,G,H	17,22,23,26,34
9.	Providing Guided Practice	E,F,I	22,26
10.	Provision for Individual Differences	E,K	23,31,35
11.	Impartial & Objective	E,K	
B. Use of Subject-matter			
1.	Highly Knowledgeable	J	9,21,22.23,24,26
2.	Sequencing of Goals	E,I	16,17,22,26,31
3.	Correspondence with District Guidelines	I,J,K	16,22,28
4.	Accurate Feedback to Students, Including Testing and Evaluation	C,F	23,26,28,34
5.	Provides Opportunities for Student Success	E,I	7,22
6.	Bases Current Lessons on Prior Learning	I	17,22
C. Direct Outcomes of Teaching			
1.	Student Achievement on Material Taught	J,K	10,17,18,28,32
2.	Students Motivated to Learn	B,E,G,H,J,K	7,17,18,22,23,26,31,32

3.	Postive and Respectful Interaction with Students	E,I,J,K	7,18,19,28,32,34,35
4.	Student Decorum: a. rules and expectations clearly expressed b. absence of distracting disorder c. students held accountable for doing their work	E,I,J,K	5,17,22,26,28,31,34,36
D. Interpersonal & Organizational Relationships			
1.	Communicates with Parents	J,K	26,28,32,34
2.	Fulfills Organizational Responsibilities	J,K	16,28,31,34
3.	Maintains Positive Colleague Relationships	J,K	28,32,33,34
E. Self Renewal			
1.	Enthusiastic About Teaching & Learning	E,I,J,K	32
2.	Keeps Current	J,K	22,36
3.	Participates in Upgrading Activities	K	17,22,23,26,31,35,36

** Letters Refer to References Appended to Table*
*** Numbers Refer to Cases Cited in Footnotes*

References and Other Sources Supporting Claim of Validation

A. Allen, D., and Ryan, K., *Microteaching,* Reading, Mass: Addison-Wesley, 1969.

B. Berliner, D.C. and Tikunoff, W.J., "The California Beginning Teachers' Study," *Journal of Teacher Education,* 1976, 27, 24-30.

C. Fisher, C.W.; Filby, N.N.; Marlaive, R.S.; Cahen, L.S.; Dishaw, M.M.; Moore, J.E.; and Berliner, D.C., *Teaching Behaviors, Academic Learning Time, and Student Achievement: Final Report of Phase III-B Beginning Teacher Evaluation Study.* (San Francisco, Calif: Far West Laboratory for Educational Research and Development, 1978).

D. Gage, N.L., *The Scientific Basis of the Art of Teaching,* New York: Teachers' College Press, 1978.

E. Good, T.L., and Brophy, J.E., *Looking into Classrooms,* (New

York: Harper and Row, 1984) 328-357.

F. Good, T.L., and Grouws, D.A., "Teaching and Mathematics Learning," *Educational Leadership*. 37, 1 October 1979. 39-45.

G. Medley, D., "Teacher Effectiveness," in H.E. Mitzell, (Ed.), *Encyclopedia of Educational Research*, (5th Ed.), New York: The Free Press, 1982, 1894-1903.

H. Rosenshine, B., "Review of Teaching Variables and Student Achievement," in G. Borich, (Ed.), *The Appraisal of Teaching: Concepts and Process*, Reading, Mass: Addison-Wesley, 1977.

I. Squires, D.A.; Huitt, W.G.; and Segars, J.K., *Effective Schools and Classrooms: A Research-Based Perspective* (Washington, D.C.: Association for Supervision and Curriculum Development, 1983).

J. Precedent decisions exist which suggest that this factor is persuasive to courts.

K. Though no empirical validations of this factor exist, compelling logic and conventional values held for teachers make this factor readily defendable as a criterion contributing to teacher effectiveness

Illustrative Cases

Reviewing cases where teachers have been charged with incompetence will suggest the credence of using the standards presented in Table 1 as performance criteria in dismissal proceedings. It must be realized, however, that teacher dismissal rarely rests on a single charge, but rather on multiple charges, such as incompetence and insubordination. According to the *American Law Reports* this pattern results from the courts' tradition that "the incompetent teacher is rarely deficient in one respect alone: rather, incompetence seems to manifest itself in a pervasive pattern encompassing a multitude of sins and bringing in its wake disorganization, dissatisfaction, disharmony, and an atmosphere unproductive for the acquisition of knowledge or any other ancillary benefit."[14] The result is that many school districts attempt to improve their cases by compiling extensive litan-

14. 4 ALR 3d 1090, at 1102.

ies of charges in order to overwhelm the court with evidence sufficient to sustain their action. The following review, therefore, contains cases which illustrate multiple qualities and behaviors, only some of which may be directly related to a teacher's instructional capabilities. Only charges which are demonstrably related to a teacher's instrumental ability or inability to impart knowledge to students will be discussed even though other factors related to fitness to teach might have been part of the case. Valente's listing of the various bases upon which teacher dismissals have been attempted illustrates the breadth of matters which are not part of this review: (1) physical or mental incapacity; (2) physical or mental mistreatment of students; (3) violation of school rules; (4) violation of duty to supervise; (5) lack of cooperation; (6) failure to discipline students; (7) lack of knowledge of the subject; (8) personal misconduct; (9) failure to adapt teaching methods; and (10) negligence.[15] Also, the cases selected for this review are those in which teachers have challenged the justness of charges regarding their competence. Cases where teachers base their claims on constitutional grounds or where teachers are discharged for immorality, criminal activity, or other evidences of unfitness to teach are not reviewed. In sum, the review that follows is representative of particular cases which illustrate instructional competency.

Instructional or Pedagogical Skills

Instructional skills have to do with a teacher's ability to present and/or reinforce the body of knowledge that makes up the subject(s) being taught. As identified in Table 1, these skills include presenting information to all students through introducing lessons, using a variety of instructional methods, involving students through teacher-directed questioning, responding to student participation in learning, and bringing lessons to closure through appropriate summarizing and reviewing techniques. A Pennsylvania court affirmed the dismissal of a high school French teacher who could not perform such skills adequately. Through a list of particulars provided by the school board, the court found that the teacher was unable to maintain an adequate pace in presenting the prescribed curriculum, presented information to students in a disorganized fashion, and failed to vary her methods of instruction. Additionally, the board demonstrated that the teacher had been given notice of her deficiencies after having been observed on a number of occasions by five different administrators over a two-year period. It was also shown that the

15. W. Valente, Law in the Schools 182 (1980).

teacher had been provided with a plan for improvement and had in excess of a full school year to implement it. On appeal, the teacher claimed that her dismissal was both procedurally incorrect and was based on insufficient evidence. The court disagreed and affirmed her dismissal, finding itself in agreement with the state's secretary of education:

> [I]n our opinion, the conduct of the school administration in this case is above reproach. The school district's evaluation procedures are a model of how a professional employee should be rated. The evaluations occurred at two levels. At the first level is the principal; if he rates a professional employee unsatisfactory, the matter is referred to the second level, the superintendent for further evaluation. While a teacher might object to being rated so often in a short period of time by different persons, such a procedure is clearly in the employee's best interest since it brings into the evaluation different viewpoints, thereby lessening the influence personal bias and prejudice with respect to teaching methods can have.[16]

Failure to master the technical skills of teaching also led to the dismissal of a South Dakota high school mathematics teacher. In defending the dismissal before the state's supreme court, the board described the teacher's inability to (1) create an "appropriate" classroom atmosphere, (2) develop student interests and attitudes, and (3) organize and present the subject-matter. Six separate evaluation reports over a three year period found the teacher deficient in organizing instruction. Specific steps were suggested for improvement: review the previous day's lesson, introduce and explain the current day's lesson, summarize the current lesson in relation to students' real-life experiences, and conclude with a brief introduction to the next assignment. In addition, specific suggestions for maintaining classroom order and improving the attitudes of the students were made. Evidence of lack of student learning, along with the teacher's admission that she wilfully refused to try the suggestions presented in her evaluation reports, led the court to comment that the teacher "has consistently demonstrated her inability to effectively teach her students. Six out of seven evaluations made on [her] during the three school years in question criticized her for deficiencies in classroom environment and teaching procedures."[17]

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16. Rosso v. Board of School Directors, 380 A.2d 1328, 1329 (Pa. Commw. Ct. 1977).
17. Busker v. Board of Educ., 295 N.W.2d 1, 3-4 (S.D. 1980).

In Iowa, a fifth grade teacher with eleven years of teaching experience challenged her dismissal, contending that the board did not have sufficient evidence to terminate her for lacking necessary skills. In its list of charges, the school administration cited, among other things, "persistent failure to provide the type of teacher-directed responses, activities, and reinforcement techniques for students to make satisfactory progress to acquire basic skills and develop a positive self-concept."[18] The teacher countered by claiming the deficiencies listed did not constitute just cause for dismissal. The court, however, found for the board, affirming its earlier definition of "just cause" in competency proceedings as teacher conduct that

> directly or indirectly, significantly and adversely affects what must be the ultimate goal of every school system: high quality education for the district's students. It relates to job performance including leadership and role model effectiveness. It must include the concept that a school district is not married to mediocrity but may dismiss personnel who are neither performing high quality work nor improving in performance.[19]

After reviewing the evidence presented by the superintendent, the principal, and the director of elementary education, the court concluded that the decision of the trial court had been apt:

> [G]iven the specificity of the charges against [the teacher] together with her apparent failure to improve notwithstanding repeated notices and assistance, the likelihood of recurrences of such incidents, and the significant and adverse psychological and emotional effect such 'negative' conduct has on elementary school children, the greater weight must be accorded the District's evidence.[20]

Use of Subject-Matter

The second area where standards of performance have been recognized by courts relates to teachers' knowledge and handling of their subject-matter. It includes skill in identifying instructional goals, developing objectives which reflect the goals, organizing the objectives into units of instruction, developing individual lesson plans, and measuring and monitoring student progress.

Though many cases over the years have alluded to teacher knowledge in discussing other deficiences, only recently has knowledge of

18. Everett, 344 N.W.2d at 320.
19. *Id* at 321, *citing* Board of Educ. v. Youel, 282 N.W.2d 677 (Iowa 1979).
20. *Id* at 322.

the subject matter been tested directly as a basis for discharge. A California court recently found that teachers'

> failure to pass the examination testing their skills in their subject field of teaching bears directly on their competence as teachers and further that the welfare of the District's students would be affected by the retention of teachers who are unable to demonstrate their competency by successfully passing a competency examination in the field they were engaged to teach.[21]

Lack of ability to plan and prepare for instruction was one of the charges which resulted in the dismissal of a tenured middle school teacher in Louisiana. The action was based on charges derived from the formal observations of four administrators, the principal, the assistant principal, the English consultant, and the personnel director. The deficiencies noted included:

(1) Poor lesson planning;

(2) Inability to get students actively participating in class presentations;

(3) Maintaining improper pace presenting information;

(4) Lack of preparation for instruction;

(5) Inadequate reinforcement of learning;

(6) Failing to give meaningful directions to students;

(7) Improper sequencing of activities during instruction;

(8) Failure to maintain classroom decorum.

As a result of these deficiencies, the teacher was put on a remediation program to help her improve her ability to plan and prepare for instruction. Over the next two years, her ability to organize her classroom performance remained inadequate. Based on the same charges that led to the remediation program, she was then dismissed. In upholding the action, a district court in Louisiana found that, "there was a rational basis for the determination that Mrs. Jones

21. United Teachers, 189 Cal. Reptr. at 905.

could not adapt to current instructional procedures and that she was incapable of organizing and carrying on a constructive instructional program. Substantial evidence established Mrs. Jones' incompetence and willful neglect of duty."[22]

In a Florida case, lack of skill in planning and preparing for instruction was a predominant cause in the dismissal of an elementary school teacher with twenty-five years of experience. In bringing its charges, the school board contended that the teacher "exhibited inadequate knowledge of subject matter. She has not exhibited good teaching practices in the conduct of her classes. As a direct result of poor planning and poor organization, student motivation has been poor. Her management of students and class discipline has not met acceptable standards."[23] The administrators detailed the charges based on numerous observations by three different supervisors which revealed that she had the following deficiencies:

(1) Failed to use proper grouping techniques;

(2) Students could not understand her explanations due to her inadequate speaking ability;

(3) Used poor grammar in her speech, which her students repeated;

(4) Misspelled words on the chalkboard, which students copied;

(5) Exhibited poor writing techniques, which students copied;

(6) Inadequate understanding of mathematics, phonics, and spelling skills;

(7) Showed inadequate knowledge of proper use of audio-visual equipment and materials;

(8) Did not maintain accurate student progress records;

(9) Had an excessive number of her students placed in low-achievement groups when promoted to the next grade level.[24]

Finding that the teacher was given notice of her deficiencies, was

22. Jones v. Jefferson Parish School Bd., 533 F. Supp. 816, 821 (E.D. La. 1982).
23. Blunt v. Marion County School Bd., 515 F.2d 951, 954 (5th Cir. 1975).
24. *Id.* at *passim.*

provided with suggestions for improving her ability to organize and present instruction, and was given time to improve, yet largely ignored the administrators' efforts to help her, the court of appeals upheld her discharge, commenting that, "the testimony of Mrs. Blunt's supervisors at the school board hearing with respect to her incompetency was not only substantial, it was devastating."[25]

An Illinois elementary school teacher with over twenty-five years of experience was dismissed on a number of grounds, including failure to provide organized classroom instruction, to present clear and understandable directions and explanations, to keep up-to-date records of student progress, and to communicate effectively with parents regarding the progress of her students. Over a period of ten months, in two separate school years, the principal, along with faculty supervisors in the subject areas of reading and language arts, social studies, and science and math observed her classes to assess her performance and identify techniques that would lead to improvement. Though a number of suggestions were formulated, the teacher resisted any change. As a result, she was dismissed. The court concurred, finding that her "deficiencies were fundamental and of long standing having to do with her own mental discipline and her lack of grasp of her subjects."[26]

Direct Outcomes of Teaching

Recent decisions reinforce the proposition that student outcomes may be utilized as surrogate measures of teaching competence. Perhaps the earliest direct use of this definition was in the well-publicized *Scheelhaase* case of a decade ago. Here, an Iowa court found that where the students consistently failed to perform within acceptable ranges on nationally normed examinations of aptitude and achievement, adequate evidence existed to conclude that the teacher was ineffective. In the arguments, little was made of the specific teacher behaviors that ostensibly caused the unsatisfactory outcomes.[27] More recently, in a case which reviewed a range of deficiencies, a teacher in Minnesota was successfully discharged for, among other things, failure of his students to show satisfactory and expected progress. He had been given notice a year prior to his termination that his performance was deficient in the following seven areas:

(1) Inability to develop positive rapport with students;

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25. *Id.* at 957.

26. Community Unit School Dist. No. 60 v. Maclin, 435 N.E.2d 845, 851 (Ill. App. Ct. 1982).

27. Sheelhaase, 488 F.2d 237.

(2) Insufficient communication with parents and fellow staff members;

(3) Inefficient use of class time;

(4) Failure to keep appointments;

(5) Failure to follow the adopted curriculum;

(6) Irrational grading;

(7) Lack of progress of his students.

An appellate court was presented with the deficiencies arranged into four categories: lack of rapport, lack of classroom control, excessive use of worksheets, and lack of student progress.

> [T]he Board's findings regarding a lack of progress by Whaley's students are the most closely related to the statutory grounds for discharge and the most clearly supported by substantial evidence in the record .... [W]e conclude that substantial evidence supports the School Board's findings that Whaley's students made unsatisfactory progress due to his poor teaching performance. When so established, lack of student progress is sufficient to trigger the grounds for discharge under [Minnesota Statutes].[28]

Lack of classroom control, by contrast, has long been recognized as a proper basis for dismissing a teacher. A recent California case where an eighth grade teacher with twenty-one years of experience was observed to have the following problems with her class: "students fighting, playing soccer in the classroom, yelling over the school intercom, yelling out the back door of the classroom, wrestling, throwing pencils, and other disruptive activities."[29] Though the teacher contended that the failure of the district to provide a detailed set of written performance standards defining acceptable classroom decorum invalidated the action, her dismissal was affirmed. The court found that she had received written notice of her deficiencies, recommendations for improvement, offers of assistance, and time to improve. Even though there were, indeed, no written standards of acceptable decorum, the court noted that legislation restricting

28. Whaley v. Anoka-Hennepin Indep. School Dist. No. 11, 325 N.W.2d 128, 131 (Minn. 1982).

29. California Teachers' Ass'n, 192 Cal. Reptr. at 360.

teacher dismissal to "just cause" did not intend to provide a defense or justification for incompetent teaching. Rather, "the lack of empirical standards applicable to this area of teacher competence mandates that evaluation of teacher performance be left to those with the professional experience and skill to meaningfully assess classroom order."[30]

A special education teacher in Louisiana was dismissed as the result of multiple charges, among which were failure to establish decorum and provide for individual differences. According to the Court,

> [o]ne of [the teacher's] chief problems was inability to maintain control of the class and obtain and hold the attention of her students. While it is conceded that handling mentally retarded children is difficult, it is also shown that by using proper procedures and techniques, order may be achieved and the attention of students held .... [The teacher] failed to properly plan class lessons to accommodate the requirements of the various students by failing to recognize and provide for differences in ages and learning abilities.[31]

Interpersonal and Organizational Relationships

Ability and willingness to develop and maintain positive relationships with parents, community members, and other staff members appears, from time to time, as a legitimate performance standard in litigation. An Iowa district dismissed a sixth grade teacher for among other things, failing to control his temper, which resulted in poor relationships with both fellow staff members and parents of his students. The court concluded that the "preponderance of the entire evidence indicates he has had continuing problems in dealing with his students, their parents, and the school administration, as well as his teaching methods and lack of self control"[32] In another Iowa district, a teacher was successfully terminated because, among other things, he displayed a "negative attitude toward and [a] poor working relationship with [the] activities director."[33]

Notice of dismissal was sent to a Minnesota high school English teacher with twenty-five years of teaching experience. Among a host of problems noted were that the had poor relations with fellow staff

30. *Id.* at 363.
31. Mims v. West Baton Rouge Parish School Bd., 315 So. 2d 349, 352-53 (La. Ct. App. 1975).
32. Fay v. Board of Directors, 298 N.W.2d 345, 349 (Iowa Ct. App. 1980).
33. Board of Educ. v. Youel, 282 N.W.2d 677, 682 (Iowa 1979).

members and had inappropriately discussed personal matters with her students. Though the state supreme court affirmed the validity of the standards used, it reinstated the teacher because the district had not provided a reasonable amount of time for her to correct the problems.[34]

Self Renewal

A final area in which performance standards for teachers have been identified relates to on-going professional development. This may be reflected in their overall enthusiasm for their work as well in maintaining their knowledge and skill levels. A first grade teacher in South Dakota with seventeen years of teaching experience was dismissed because she refused to try new teaching methods or different techniques in order to correct deficiencies in providing for the individual needs of her students.[35] In the latter case, the court was persuaded that "there was a lack of any reasonable response to the recommendations."[37]

Conclusion

Certain patterns emerge from analyzing court reviews of teacher dismissals for incompetence. They include the following:

(1) Successful establishment of incompetence is the result of a pattern of behavior that develops over time rather than the result of a single incident or shortcoming;

(2) Deficiencies must be determined by first-hand observation:

(3) Notice of specific deficiencies must be provided the teacher, along with suggestions for improvement;

(4) Reasonable time for improvement must be allowed;

(5) Follow-up evaluation must be done in order to assess whether or not improvement has occurred.

More important, however, is that the performance standards cited by successful districts were not merely the product of an administra-

34. Ganyo v. Independent School Dist. No. 832, 311 N.W.2d 497 (Minn. 1981).
35. Mortweet v. Ethan Bd. of Educ., 241 N.W. 2d 580 (1976).
36. Board of Directors v. Mroz, 295 N.W.2d 447 (Iowa 1980); Laws v. Richland County School Dist., 243 S.E.2nd 192 (S.C. 1978)
37. Laws, 243 S.E.2d at 194.

tor's conventional wisdom or personal preferences regarding effective teaching. Sustained cases abandoned that tradition and in its place established relatively stable criteria that appeared to be independent of the context where they were used. Though none of the cases openly cited research on teaching and/or learning there is no reason why they could or should not have done so. Empirically and logically derived performance standards such as those listed in Table 1 could do much to strengthen the board's charges when dismissal is necessary. The most fair and most effective way to evaluate a teacher is to view evaluation as a cycle of events that begins with providing employees comprehensive, stable, and valid performance standards. These standards also can be used to assess the work done, to provide corrective action, and to determine whether improvement has occurred. It is now possible to take the first, and most crucial step. Until that is done a legally and morally justifiable evaluation cycle can never be completed.